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Application No.: 10/687,205

Docket No.: 28944/38522

SEP 26 2006

REMARKS

This paper is in response to the official action mailed August 1, 2006, which included an election of species requirement.

I. Election of Species Requirement

The examiner alleged in the official action that the present application contains claims directed to the following species:

Species I: Figures 1

Species II: Figure 2

Species III: Figure 3

Species IV: Figure 4

Accordingly, the examiner has required the applicant to elect a single species for prosecution on the merits under 35 U.S.C. § 121. The examiner acknowledges that at least claim 1 is generic.

II. Election of Species

In response to the election requirement, applicant hereby elects the species covered by Figure 1, *with traverse*. At least claims 1, 2, 5-7, 10, 11, 13-15, 17 and 19 read on the elected species. Additionally, at least claims 1, 2, 6, 7, 11, 13 and 14 appear to be generic.

Applicant's election is made without prejudice. As noted by the Examiner, upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to not more than a reasonable number of species in addition to the elected species, provided that all claims to each additional species are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.146.

III. Traversal of the Election Requirement

Applicant respectfully submits that the restriction is improper with respect to Figures 1-4 and request that Figure 2 (at least claims 1, 2, 6, 7, 11, 13 and 14 are readable thereon), Figure 3 (at least claims 1, 2, 6, 7, 11, 13 and 14 are readable thereon) and Figure 4

Application No.: 10/687.205

Docket No.: 28944/38522

(at least claims 1, 2, 6, 7, 11, 13 and 14 are readable theron) be examined together with Figure 1.

MPEP § 808.01(a), Reasons for Insisting Upon Restriction, Species, states:

A requirement for restriction is permissible if there is a patentable difference between the species claimed and there would be a serious burden on the examiner if restriction is not required.

Contrary to the requirements of MPEP § 808.01, the examiner has not provided reasons or examples for concluding that patentably distinct species exist within the application. In particular, the examiner has not demonstrated or explained how each of the species groups requires a separate classification, separate status in the art, or a different field of search, as required by MPEP § 808.02. Instead, the examiner merely asserts that the application contains claims directed to patentably distinct species without definitively demonstrating that these patentably distinct species exist. A mere assertion that the claims are directed to patentably distinct species does not, in and of itself, establish a *prima facie* case that such species exist. Because the examiner has not provided appropriate explanation of separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02 with respect to each of the identified species groups, the examiner has not properly restricted the claims based on species criteria.

Furthermore, the MPEP specifically states that there are two requirements for a proper restriction under 35 U.S.C. § 121. First, “[t]he inventions must be independent or distinct as claimed” and second “[t]here must be a serious burden on the examiner if restriction is required” (emphasis added). MPEP § 803. “If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions” (emphasis added). MPEP § 803.

In conclusion, the examiner has not established a *prima facie* case that the identified species are independent, and furthermore no serious burden on the examiner would result if restriction of the claims is not required at this time. For these reasons, Applicants respectfully request that Figures 2-4 be examined together with Figure 1.

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Docket No.: 28944/38522

SEP 26 2006

IV. Conclusion

In view of the above, applicant believes the pending application is in condition for allowance, however, if the examiner has any further questions, he is invited to contact the undersigned agent or David C. Read, attorney for applicant, at the number below.

Dated: September 26, 2006

Respectfully submitted,

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